

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Lance C Wells,

10 Plaintiff,

11 v.

12 Maplebear Incorporated,

13 Defendant.  
14

No. CV-23-00001-TUC-RM (BGM)

**ORDER**

15 Magistrate Judge Bruce G. Macdonald simultaneously filed a Report and  
16 Recommendation (“R&R”) recommending this Court deny Plaintiff’s Motion for  
17 Summary Judgment (Doc. 28) and a separate R&R recommending this Court grant  
18 Defendant’s Motion to Dismiss Amended Complaint and to Compel Arbitration (Doc.  
19 29). Plaintiff subsequently filed a “Submission of Evidence and Acknowledgement of  
20 Hopelessness” (Doc. 30), to which Defendant responded (Doc. 31). For the following  
21 reasons, the Court will adopt each R&R and grant Defendant’s Motion to Dismiss.

22 **I. Background**

23 Plaintiff’s Amended Complaint<sup>1</sup> raises two claims against Defendant. (Docs. 1,  
24 14.) In Claim One, Plaintiff alleges Defendant abridged his First Amendment right to  
25 free speech, based in part on “an extremely broad non-disparagement clause” in the  
26 parties’ previously executed Settlement Agreement. (Doc. 1 at 4.) As relief, Plaintiff

27 <sup>1</sup> After filing his Original Complaint (Doc. 1) that contained only his free speech claim,  
28 Plaintiff filed an Amendment to Pleading requesting to add a second claim against  
Defendant (Doc. 14). The Magistrate Judge referred collectively to Doc. 1 and Doc. 14  
as the “Amended Complaint.” (Doc. 29 at 2.) This Court will do the same.

1 requests that “all pertinent portions of the settlement agreement [be] declared null and  
2 void.” (*Id.*) In Claim Two, Plaintiff alleges Defendant “engages in discriminatory  
3 practices, specifically with regard to the race and gender provisions of the Civil Rights  
4 Act” of 1964. (Doc. 14.) Plaintiff further alleges these “ongoing practices . . . can be  
5 demonstrated via the company’s official policies and the published statements of  
6 company representative(s).” (*Id.*) Plaintiff avers that “these practices have the effect of  
7 creating a hostile work environment, and thus deprive the subject(s) of their right to  
8 maintain longstanding employment...without concern for loss of position, loss of further  
9 employment and advancement opportunities, and loss of the personal dignity which all  
10 citizens are due.” (*Id.*) As relief for Claim Two, Plaintiff requests that the Court “prohibit  
11 defendant from continuing with any policies, practices, and statements that are  
12 discriminatory, including...published statements that express favoritism towards certain  
13 demographic groups and denigration towards others.” (*Id.*)

14 Defendant filed a Motion to Dismiss Amended Complaint and Compel  
15 Arbitration. (Doc. 17.) Therein, Defendant argues that Plaintiff fails to state a claim for  
16 violation of the First Amendment right to free speech for two reasons. (*Id.* at 4-5.) First,  
17 Defendant argues that the First Amendment is inapplicable to the parties’ settlement  
18 agreement because Defendant is a private entity, and “the First Amendment only protects  
19 speech from government censorship.” (*Id.* at 4.) Next, Defendant contends that Plaintiff  
20 fails to state a claim because Plaintiff did not “plead any facts showing that Instacart  
21 engaged in state (governmental) action.” (*Id.* at 5.) Consequently, Defendant asserts, the  
22 Court should dismiss Plaintiff’s First Amendment claim with prejudice under Federal  
23 Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be  
24 granted. (*Id.* at 3-5.) Defendant further argues that the Court should dismiss and compel  
25 Plaintiff’s civil rights claim to arbitration because this claim is subject to final and  
26 binding arbitration under the Independent Contractor Agreement signed by Plaintiff. (*Id.*  
27 at 2, 5-16.)

28 Plaintiff then filed a Motion for Summary Judgment, in which he “moves for

summary judgment on the entirety of his Amended Complaint under *42 U.S.C. § 1983*.” (Doc. 19 at 1) (emphasis added). Plaintiff “maintains that his several demonstrations showing the Defendant...and Defendant’s officers, directors, employees, and contractors are either 1) state actors; 2) potential state actors; or 3) unknowable as to such status...are verifiable as publicly available information and are therefore beyond reasonable dispute.” (*Id.* at 1-2.) Plaintiff avers that “[u]nder 42 U.S.C. § 1983, the speech-oriented provisions” of the parties’ settlement agreement are “invalid and unenforceable...because those provisions effect prior restraint on Plaintiff’s First Amendment right to freedom of speech.” (*Id.* at 2.) Plaintiff further avers that “Section 1983 additionally authorizes Plaintiff to enforce his civil rights against Defendant’s discriminatory policies, practices, and public statements that violate the Civil Rights Act of 1964, as those actions were and are committed by state actor(s) and/or under color of state law.” (*Id.*) Plaintiff also requests relief “[p]ursuant to 42 U.S.C. § 1988.” (*Id.*) Plaintiff seeks “an injunction against Defendant’s continued implementation of such policies, practices, and public statements” and “a monetary award equal to the fees and costs sought by Defendant, estimated to total approximately \$25,000 based on research of corporate attorneys’ salaries in Arizona.” (*Id.* at 2-3.)

## **II. Reports and Recommendations**

The Magistrate Judge issued two Reports and Recommendations in Defendant’s favor. (Docs. 28, 29.) The Report and Recommendation Re: Plaintiff’s Motion for Summary Judgment recommended that this Court deny Plaintiff’s Motion for Summary Judgment on procedural grounds because Plaintiff raised claims in his Motion for Summary Judgment that he did not allege in his Amended Complaint. (Doc. 28 at 15.) Specifically, the R&R found that Plaintiff’s newly alleged claims under 42 U.S.C. § 1983 and § 1988 are “not viable grounds for Plaintiff’s motion for summary judgment under Rule 56(a)” of the Federal Rules of Civil Procedure. (*Id.* at 8.) The R&R also recommended denying Plaintiff’s Motion for Summary Judgment on substantive grounds because Plaintiff failed to carry the burden of production to show there is no

1 genuine dispute as to any material fact under Rule 56(a). (*Id.* at 14-15.)

2 The Report and Recommendation Re: Defendant’s Motion to Dismiss Amended  
3 Complaint and to Compel Arbitration recommended this Court grant Defendant’s Motion  
4 to Dismiss. (Doc. 29 at 19.) The R&R found that (1) Plaintiff’s “Amended Complaint  
5 lacks sufficient facts to meet the threshold state actor requirement for Plaintiff’s First  
6 Amendment free speech claim,” and (2) “Plaintiff’s Civil Rights Act of 1964 claim is  
7 subject to arbitration under the Independent Contractor Agreement.” (*Id.* at 2-3.)  
8 Accordingly, the R&R recommended dismissing “Claim One” with prejudice for failure  
9 to state a claim upon which relief can be granted under Federal Rule of Civil Procedure  
10 12(b)(6). (*Id.* at 19.) As to “Claim Two,” the R&R recommended the Court compel the  
11 parties to participate in arbitration pursuant to the arbitration clause of the Independent  
12 Contractor Agreement.<sup>2</sup> (*Id.*) Each R&R permitted the parties to “file written  
13 objections” to the proposed recommendations “pursuant to 28 U.S.C. § 636(b) and Rule  
14 72(b)(2), Federal Rules of Civil Procedure.” (Doc. 28 at 15; Doc. 29 at 19.)

### 15 **III. Legal Standard**

16 A district judge must “make a de novo determination of those portions” of a  
17 magistrate judge’s “report or specified proposed findings or recommendations to which  
18 objection is made.” 28 U.S.C. § 636(b)(1). The advisory committee’s notes to Rule  
19 72(b) of the Federal Rules of Civil Procedure state that, “[w]hen no timely objection is

---

20  
21 <sup>2</sup> The Magistrate Judge found that Claim Two, alleged under the Civil Rights Act of  
22 1964, falls under the arbitration provision of Section 9.3 of the parties’ Independent  
Contractor Agreement. (Doc. 29 at 15.) That arbitration provision states, in pertinent  
part:

23 Except as otherwise provided in this Arbitration Provision, the disputes and claims  
24 covered by this arbitration Provision include any and all disputes and claims BETWEEN  
25 YOU AND INSTACART arising out of or relating to this Agreement, **your**  
26 **classification as an independent contractor**, or the Services performed under this  
27 Agreement which could otherwise be heard before a court of competent jurisdiction (a  
28 “Claim”), including but not limited to . . . **discrimination or harassment, including but**  
**not limited to discrimination or harassment based on race, sex, color, . . . ; violation**  
**of any local, state, or federal constitution, statute, . . . Title VII of the Civil Rights**  
**Act of 1964, and all other federal, state or local statutory and legal claims arising**  
**out of or relating to your relationship with Instacart[.]**

(Doc. 17 at 30) (emphasis added).

1 filed, the court need only satisfy itself that there is no clear error on the face of the record  
 2 in order to accept the recommendation” of a magistrate judge. Fed. R. Civ. P. 72(b)  
 3 advisory committee’s note to 1983 addition. *See also Johnson v. Zema Sys. Corp.*, 170  
 4 F.3d 734, 739 (7th Cir. 1999) (“If no objection or only partial objection is made, the  
 5 district court judge reviews those unobjected portions for clear error.”); *Prior v. Ryan*,  
 6 No. CV 10-225-TUC-RCC, 2012 WL 1344286, at \*1 (D. Ariz. Apr. 18, 2012) (reviewing  
 7 for clear error unobjected-to portions of Report and Recommendation).

#### 8 **IV. Discussion**

9 In his “Submission of Evidence and Acknowledgment of Hopelessness,” Plaintiff  
 10 purports to “submit[] seventy pieces of evidence to supplement” his previous filings.  
 11 (Doc. 30 at 1.) Plaintiff notes that “[t]hese documents are filed for the record and for  
 12 posterity, not because Plaintiff imagines that the glut of proof will make the slightest  
 13 difference to the outcome of this case.” (*Id.*) Plaintiff further “acknowledges that he has  
 14 no chance of finding justice through a comprehensively corrupt judicial system,”  
 15 although he claims he has “amassed an overabundance of evidence.” (*Id.* at 1, 4.)  
 16 Plaintiff concludes that the Magistrate Judge’s findings were “seemingly predetermined”  
 17 and that “the proceedings were a pretense” and “prejudicial.” (*Id.* at 4.)

18 Plaintiff only sparingly addresses the Magistrate Judge’s findings. In one  
 19 instance, Plaintiff asserts that “any teenager with a willingness to absorb factual  
 20 information and a modicum of objectivity could see that Instacart qualifies as a state  
 21 actor.” (*Id.* at 3.) Later, Plaintiff submits that summary judgment “was merited as soon  
 22 as the presence of a single state actor among Instacart’s ranks was irrefutably proven”  
 23 and that his “case involves easily-verifiable blatant violations of 42 U.S.C. § 1983.” (*Id.*  
 24 at 4, 5.) However, Plaintiff dedicates most of his Submission to lamenting about the  
 25 outcomes of unrelated cases (*id.* at 2-3, 5-7) and social issues (*e.g., id.* at 7).

26 In response to Plaintiff’s Submission of Evidence, Defendant argues that  
 27 Plaintiff’s filing “should be denied because it did not provide specific written objections  
 28 to the Magistrate Judge’s proposed findings and recommendations, which was the only

1 filing permitted pursuant to each of the Magistrate Judge’s Report and Recommendation  
 2 (Doc. 28 and Doc. 29) and Federal Rule of Civil Procedure 72(b)(2).” (Doc. 31 at 1.)  
 3 Defendant further asserts that because the filing was unauthorized, the Court should  
 4 strike it under Local Rule of Civil Procedure 7.2(m)(l). (*Id.* at 2.) Accordingly,  
 5 Defendant requests that this Court adopt each R&R. (*Id.* at 1.) Defendants also requests  
 6 an award of attorneys’ fees and costs pursuant to the parties’ settlement agreement and  
 7 California Civil Code § 1717. (*Id.* at 4.)

8 After reviewing Plaintiff’s Submission of Evidence and Acknowledgement of  
 9 Hopelessness (Doc. 30) and each Report and Recommendation (Docs. 28, 29), the Court  
 10 finds that Plaintiff’s Submission fails to identify “specific written objections to the  
 11 proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2). Other than the  
 12 aforementioned conclusory statements, Plaintiff does not raise any issues regarding the  
 13 Magistrate Judge’s core findings that Plaintiff’s “Amended Complaint lacks sufficient  
 14 facts to meet the threshold state actor requirement for Plaintiff’s First Amendment free  
 15 speech claim, and Plaintiff’s Civil Rights Act of 1964 claim is subject to arbitration.”  
 16 (Doc. 29 at 2-3.) Because Plaintiff has not identified “specific written objections” to the  
 17 R&Rs, clear error review is appropriate. The Court has reviewed the R&Rs and the  
 18 entire record, and has not found any error in the Magistrate Judge’s findings and  
 19 recommendations.<sup>3</sup> Accordingly, the Court will adopt the R&Rs, deny Plaintiff’s Motion  
 20 for Summary Judgment, and grant Defendant’s Motion to Dismiss. After entry of  
 21 judgment, Defendant may file an appropriate motion for attorneys’ fees and costs  
 22 pursuant to Local Rules of Civil Procedure 54.1 and 54.2.

23 **IT IS ORDERED** that the Report and Recommendation Re: Plaintiff’s Motion for  
 24 Summary Judgment (Doc. 28) is **accepted and adopted in full**.

25 **IT IS FURTHER ORDERED** that Plaintiff’s Motion for Summary Judgment  
 26 (Doc. 19) is **denied**.

27 . . . .


28 \_\_\_\_\_  
<sup>3</sup> The Court declines Defendant’s request to strike Plaintiff’s Submission.

1           **IT IS FURTHER ORDERED** that the Report and Recommendation Re:  
2 Defendant's Motion to Dismiss Amended Complaint and to Compel Arbitration (Doc.  
3 29) is **accepted and adopted in full**.

4           **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss Amended  
5 Complaint and to Compel Arbitration (Doc. 17) is **granted**. Plaintiff's Amended  
6 Complaint (Docs. 1, 14) is **dismissed**. Plaintiff's Claim One under the First Amendment  
7 is **dismissed with prejudice**. Plaintiff's Claim Two, alleged under the Civil Rights Act  
8 of 1964, is **dismissed without prejudice**, and the Court compels the parties to participate  
9 in arbitration pursuant to the terms of the parties' Independent Contractor Agreement.  
10 The Clerk is directed to enter judgment accordingly and close this case.

11           Dated this 20th day of September, 2023.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



---

Honorable Rosemary Márquez  
United States District Judge